

REMARKS

The Examiner is thanked for the due consideration given the application. A substitute abstract has been provided.

Claims 1, 6-15 and 17-25 are pending in the application. Independent claims 1 and 15 have been amended to better reflect the data set forth in the Declaration filed May 7, 2008. New claim 24 reflects the b) + c) combination, which was also shown to be effective in the Declaration. New claim 25 also reflects claim 15 in light of the Declaration and the synergistic effects of the present invention.

No new matter is believed to be added to the application by this amendment.

Statement of Substance of Interview

The Examiner is thanked for graciously conducting a personal interview with the Applicant's representative on March 27, 2009. During the interview, the claimed invention was discussed in light of the signed Declaration filed May 7, 2008, along with potential claim amendments to better conform with the Declaration.

At the end of the interview, the Examiner prepared an interview summary. The interview summary has been reviewed, and it appears to accurately reflect the substance of the interview.

The Abstract

The Abstract is objected to as not being clear and concise. A substitute Abstract has been provided that is clear and concise and contains 50-150 words.

Rejection Under 35 USC §112, Second Paragraph

Claims 7-11, 14, 15, 18, 19 and 22 have been rejected under 35 USC §112, second paragraph as being indefinite. This rejection is respectfully traversed.

The comments in the Official Action have been considered, and the claims have been amended to be clear, definite and have full antecedent basis.

This rejection is believed to be overcome, and withdrawal thereof is respectfully requested.

Art Rejections

Claims 1, 7, 8, 15, 18 and 19 remain rejected under 35 USC § 103(a) as being unpatentable over YALOVENY AGRIC IND (SU 1373398A) as evidenced by NIEUWENHUIZEN et al. (U.S. Publication 2003/0064937) and COOPER et al. (U.S. Patent 6,379,720). Claims 1, 6-15 and 17-23 remain rejected under 35 USC § 103(a) as being unpatentable over WALKER et al. (U.S. Patent 5,474,774), IMAOKA et al. (JP 406179609), BARNEY et al. (U.S. Patent 5,370,863), VAN DEN BERGHE (U.S. Patent 6,284,289), and ZOU (CN 1421240), as evidence by GORENBEIN et al. (U.S. Patent 5,955,102), NIEUWENHUIZEN et al., COOPER et al. GHOSAL (U.S. Patent

6,224,906) and Appendino et al. (Journal of Natural Products, 65(3):334-8, 2002).

These rejections are respectfully traversed.

Distinctions of the present invention over the applied art references have been made of record in the application. These distinctions pointed out the inability of the applied art to assert prima facie unpatentability of the present invention and the unexpected results rebutting any unpatentability set forth in the signed Declaration filed May 7, 2008.

For brevity these distinctions are not repeated here.

Further, independent claims 1 and 15 of the present invention have been instantly amended to better conform with the unexpected results set forth in the signed Declaration filed May 7, 2008. It is also believed that the newly presented claims are also covered by the unexpected results set forth in the Declaration, including combinations of A+B+C and B+C such as is set forth in Tables 1 and 2, reproduced below.

TABLE 1

	P.I.		Inflammation of pharynx and tonsils	
	Basal Value	After treatment	Basal Value	After treatment
<i>Vaccinium myrtillus</i> extract (A)	4.7	4.0	2.8	1.9
<i>Vitus vinefera</i> extract (B)	4.5	4.1	2.8	2.0
<i>Mirtus Communis</i> extract (C)	4.6	4.2	2.9	2.2
Composition containing B+C	4.6	2.5	2.8	0.7
Composition containing A+B+C	4.7	1.7	2.9	0.1
Placebo	4.6	4.4	2.9	2.8

TABLE 2

	Bacterial count ($\times 10^5$) in gargling samples	
	Basal Value	After treatment
<i>Vaccinium myrtillus</i> extract (A)	20.2	15.2
<i>Vitus vinefera</i> extract (B)	21.4	16.9
<i>Mirtus Communis</i> extract (C)	21.0	17.2
Composition containing B+C	23.2	4.9
Composition containing A+B+C	22.9	2.6
Placebo	23.6	22.4

The advantages of the invention are thus clear, and any *prima facie* unpatentability has thus been fully rebutted.

These rejections are believed to be overcome, and withdrawal thereof is respectfully requested.

Conclusion

The rejections are believed to have been overcome, obviated or rendered moot, and that no issues remain. The Examiner is accordingly respectfully requested to place the application in condition for allowance and to issue a Notice of Allowability.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item:

☒ - a Substitute Abstract of the Disclosure